

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 32/2025
[2025] NZSC 87

BETWEEN	REBECCA ELIZABETH LANE Applicant
AND	ANNE VERONICA GOLDSON AND BENJAMIN JAMES GOLDSON (AS EXECUTORS OF THE ESTATE OF DONALD ALGERNON GIFFORD) Respondents

Court: Ellen France, Williams and Kós JJ

Counsel: M I S Phillipps and A J Steele for Applicant
M L Barnes for Respondents

Judgment: 23 July 2025

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay the respondents one set of costs of \$2,500.**
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REASONS

Introduction

[1] This application for leave to appeal relates to Ms Lane’s unsuccessful application for an order under s 19(1) of the Administration Act 1969 calling on the respondents to show cause why probate in relation to the will of Donald Gifford should not be granted to the Public Trust.¹ Ms Lane then seeks to have the Public Trust bring

¹ The respondents are the executors of Mr Gifford’s estate.

a Property (Relationships) Act 1976 (PRA) claim against Mr Gifford's de facto partner, Ms Goldson. Ms Lane wants the Public Trust to claim 50 per cent of the value of a property in Auckland (the Auckland property), formerly owned by Mr Gifford but owned by Ms Goldson when Mr Gifford died.² Ms Lane seeks to enlarge the estate of Mr Gifford to enable her to bring a claim against it. The High Court dismissed the application.³ The Court of Appeal dismissed Ms Lane's appeal.⁴

Background

[2] We largely adopt the description of the background in the judgment of the Court of Appeal.⁵ Ms Lane was raised by her mother, Ms Firth, and Ms Firth's then husband. Her birth certificate records Ms Firth and her husband as her parents. The couple separated when Ms Lane was 16. Ms Lane and her mother lived in a property her mother had purchased.

[3] Ms Firth began living with Mr Gifford in the Auckland property in 1982. The two had been in a relationship much earlier. Ms Lane was told that Mr Gifford was her father.⁶ In 1983, Mr Gifford transferred a half share in the Auckland property to Ms Firth. This share was transferred back to Mr Gifford when the couple separated in 1992. Ms Firth was granted a mortgage instead.

[4] The following year, Mr Gifford and Ms Goldson began a de facto relationship. They had one son born in 1995. The couple maintained separate homes but had a committed relationship. Ms Goldson was the main income earner.

[5] After Ms Firth died in 2011, Ms Lane contested her mother's will and received about \$3 to \$4 million from the estate. Ms Goldson's evidence was that Ms Lane and Mr Gifford had nothing to do with each other after this point.

² A 50 per cent share of the property has an indicated value range of \$1.9 to \$2.25 million. The estate is otherwise insolvent.

³ *Lane v Goldson* [2023] NZHC 2620 (Downs J).

⁴ *Lane v Goldson* [2025] NZCA 36 (Hinton, Mander and Walker JJ) [CA judgment].

⁵ At [7]–[29].

⁶ According to Ms Goldson, he said later in life that he was not certain of this.

[6] In Mr Gifford's will, dated 3 December 2015, his chattels, primarily artwork, were left to Ms Goldson; \$5,000 was bequeathed to "my daughter" Ms Lane; and the residuary estate went to the Aldebaran Trust (settled that day). In January 2016, Mr Gifford transferred the Auckland property to the trustees of the Aldebaran Trust, namely, Mr Gifford, Ms Goldson and Ms Goldson's brother. The Court was told the trust beneficiaries were Mr Gifford, Ms Goldson and their son.

[7] In 2016 Mr Gifford became unwell. He stopped work in 2018 because of his ill health. Ms Goldson took over managing his finances. She and their son moved into the Auckland property to care for Mr Gifford. Her evidence was that she paid about \$500,000 for remedial work on the house and that from this point onwards she paid for the majority of Mr Gifford's outgoings.

[8] By 2020 Mr Gifford's health was such that Ms Goldson engaged a live-in carer. Later that year, on 29 September 2020, the trustees wound up the Trust and distributed the property to Ms Goldson. From late 2020 until his death on 26 February 2022, Mr Gifford was in full-time care in a secure dementia unit with costs being met by Ms Goldson.

[9] In dismissing Ms Lane's application, the High Court's conclusions, as summarised by the Court of Appeal, were as follows:⁷

- (a) that s 19 was not an appropriate vehicle for what Ms Lane sought to achieve because administration had been lawfully concluded;
- (b) the Public Trust would not necessarily receive leave to bring a claim under the PRA; and
- (c) there was no evidence as to how the Public Trust would be funded if appointed.

[10] Ms Lane appealed to the Court of Appeal challenging these conclusions. In dismissing the appeal, the Court described the key issue as being "whether there could be a credible claim by the estate against Ms Goldson under the PRA, without which there is no basis for removing the executors".⁸ It was common ground that to bring a claim under the PRA, the Public Trust would have to meet the test in s 88(2)

⁷ CA judgment, above n 4, at [34].

⁸ At [51] and see [59].

of the PRA. That subsection provides that the personal representative may apply for an order under s 25(1)(a) (determining shares in relationship property or dividing those shares). Subsection 88(2) states that leave may only be granted if the court “is satisfied that refusing leave would cause serious injustice”. The Court of Appeal said whether the serious injustice test was met here turned on whether Ms Lane’s case had some merit, under the Family Protection Act 1955 or s 77 of the PRA.

[11] In assessing whether the claim was a credible one, the Court of Appeal noted that there was no evidence from Ms Lane of financial need, breach of moral duty or other special circumstances.⁹ Nor was need or breach of moral duty implicit. The case was some distance factually from the leading case, *Public Trust v Whyman*.¹⁰ Nor did the Court consider Ms Goldson was obtaining a windfall. She had been the primary earner in a long relationship and put considerable funds into the property as well as caring for Mr Gifford.

The proposed appeal

[12] The central point the applicant wishes to advance on the proposed appeal concerns the correct approach to s 88(2). As to that the applicant submits that:

18. In assessing whether or not there would be serious injustice on an application for leave under s 88(2) PRA, the Court needs to consider first the merits of the PRA claim and second the merits of the beneficiary’s claim against the deceased’s share of relationship property i.e. the enlarged estate. This distinction was blurred or conflated by the Court of Appeal when assessing whether there was a “credible claim”. The focus in the authorities is almost invariably on the prospective claim by the beneficiary against the estate’s share of the relationship property.
19. The Court of Appeal erred in grafting on considerations peculiar to claims under the FPA, such as breach of moral duty or a need for financial support, when the applicant did not intend to make a claim under the FPA.
20. Mr Gifford’s estate’s claim to an equal share of the relationship property was strong. The applicant then had an automatic statutory entitlement to a share of the residuary estate under section 77 of the [Administration Act]. The applicant does not have to show “merit” to receive her entitlement.

⁹ The Court noted there was no response in the evidence from Ms Lane to Ms Goldson’s evidence she believed Ms Lane received \$3 to \$4 million from her mother’s estate.

¹⁰ *Public Trust v Whyman* [2005] 2 NZLR 696 (CA).

[13] The applicant also argues that the Court took into account factors irrelevant under the approach in *Public Trust v Whyman*.

[14] The respondent says there has been no conflation in the tests applied by the Court of Appeal and that the Court's assessment has followed the well-established principles in *Public Trust v Whyman*. The Court of Appeal accepted that it was not its task to reach a concluded view on whether there could be serious injustice to Ms Lane but rather said that it was necessary to be satisfied "there was some merit in the argument — that Ms Lane's case is, in fact, credible".¹¹

[15] It may be that at some point this Court may wish to consider the correct approach in such claims. However, we do not see this case as providing an appropriate vehicle for that consideration. The applicant does not challenge the principles set out in *Public Trust v Whyman*. Further, nothing raised by the applicant calls into question the assessment of the prospective merits of the case by the Court of Appeal. The criteria for leave to appeal are not met.¹²

Result

[16] The application for leave to appeal is dismissed.

[17] The applicant must pay the respondents one set of costs of \$2,500.

Solicitors:

Vicki Amundsen Trust Law, Auckland for Applicant
Glaister Keegan, Auckland for Respondents

¹¹ CA judgment, above n 4, at [63].

¹² Senior Courts Act 2016, s 74(2)(a) and (b); and *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].